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17 **UNITED STATES DISTRICT COURT IN AND FOR**
 18 **THE NORTHERN DISTRICT OF CALIFORNIA**

19 HOUTAN PETROLEUM, INC.)	CASE NO. CV 07-05627 SC
20 Plaintiff,)	
21 v.)	JOINT CASE MANAGEMENT STATEMENT
22 CONOCOPHILLIPS COMPANY, a Texas)	Date: 12/14/07
23 Corporation and DOES 1 through 10,)	Time: 10:00 a.m.
24 Inclusive)	
Defendants.)	

26 Pursuant to Local Rule 16-9 and the Court's Order Setting Case Management Conference,
 27 Plaintiff, HOUTAN PETROLEUM, INC. ("Houtan") and Defendant, CONOCOPHILLIPS
 28 COMPANY ("ConocoPhillips"), hereby submit this Joint Case Management Statement.

1 **1. Jurisdiction and Service:**

2 Plaintiff contends that the Court has subject matter jurisdiction over this action based on the
3 provisions of the Petroleum Marketing Practices Act (“PMPA”), 15 U.S.C. Section 2805, which
4 explicitly confers jurisdiction on the United States District Courts over civil actions brought against
5 franchisors by franchisees, regardless of the amount in controversy. Plaintiff contends that
6 jurisdiction over this action is therefore appropriate since this case involves a federal question
7 pursuant to the provisions of 28 U.S.C. Section 1331. ConocoPhillips disputes that Plaintiff has
8 stated a claim upon which relief may be granted under the PMPA, and therefore contends that the
9 Court lacks subject matter jurisdiction. No issues exist regarding personal jurisdiction or venue. No
10 parties remain to be served.

11 **2. Summary of Facts:**

12 Houtan formerly operated a Union 76 gas station in Mountain View, California (the
13 “Station”) as a ConocoPhillips franchisee and sublessee for approximately 10 years. ConocoPhillips
14 did not own the Station premises, but leased it from a third-party, V.O. Limited Partners (“V.O.
15 Limited”). ConocoPhillips owns the structures, equipment and improvements at the Station.

16 The previous franchise agreement between Houtan and ConocoPhillips expired on August 31,
17 2007. The Master Lease between ConocoPhillips and V.O. Limited was set to expire on October 31,
18 2007, and ConocoPhillips had no further option or right to renew the Master Lease. ConocoPhillips
19 contends that it advised Houtan of these facts, but that Houtan still wished to enter a new three-year
20 franchise agreement. ConocoPhillips contends that it provided such an agreement to Houtan in May
21 2007.

22 The effective date of the renewed franchise agreement was September 1, 2007, and expiring
23 on August 31, 2010. ConocoPhillips contends, however, that the franchise agreement included an
24 addendum providing that, in the event ConocoPhillips was unable to secure an extension or renewal
25 of the Master Lease, the franchise agreement was thereby terminated effective October 31, 2007.
26 ConocoPhillips contends, and Houtan disputes, that this addendum constituted an effective notice of
27 termination under the PMPA. Houtan executed the franchise agreement, including by separately
28 initialing the addendum described above, on July 6, 2007. ConocoPhillips executed the franchise

1 agreement on August 6, 2007.

2 ConocoPhillips contends that it made several attempts to communicate with V.O. Limited
3 regarding an extension or renewal of the Master Lease, but that V.O. Limited never provided a
4 substantive response. Accordingly, in September 2007, ConocoPhillips advised Houtan that the
5 franchise agreement would terminate as set forth in the franchise agreement. On October 18, 2007,
6 Houtan advised ConocoPhillips that it had entered into a lease agreement for the Station premises
7 directly with V.O. Limited, and demanded that ConocoPhillips make a bona fide offer to sell its
8 equipment and improvements at the Station to Houtan. ConocoPhillips contends that Houtan's
9 demand for such an offer was untimely under the PMPA. Houtan disputes this contention.
10 Nevertheless, ConocoPhillips subsequently offered to sell its equipment and improvements to Houtan
11 for \$340,000 within 7 days of the offer. ConocoPhillips contends that this price was based on an
12 appraised value determined by an independent, third-party appraiser retained by ConocoPhillips.
13 Houtan contends that the terms and conditions of the offer were arbitrary, commercially unreasonable
14 and generally exceeded and failed to approach the fair market value of the improvements and
15 equipment.

16 Houtan contends that Conoco's termination failed to comply with the PMPA for various
17 reasons, including untimely notice of termination and because its offer was not *bona fide*.
18 ConocoPhillips disputes these contentions and maintains that its termination was timely, and in all
19 other respects fully complied with the requirements of the PMPA. Further, ConocoPhillips denies
20 that it was legally required to offer to sell its equipment and improvements to Houtan, but contends
21 that if it was required to make such an offer, it did so by offering to sell its interest in the equipment
22 and improvements to Houtan for \$340,000. Houtan disputes this and contends that the PMPA did
23 require ConocoPhillips to offer to sell the equipment and improvements. Houtan also contends that
24 by virtue of having made the offer in response to Houtan's demand, ConocoPhillips has waived and
25 should be estopped from arguing that it was not required to make the offer or that its offer need not
26 have been *bona fide* within the meaning of the PMPA. ConocoPhillips disputes Houtan's contentions.

27 On November 5, 2007, Houtan initiated the underlying action and filed an *ex parte*
28 application for a temporary restraining order and preliminary injunction to prevent the termination of

1 the franchise. Although the Court initially granted a temporary restraining Order on November 6,
2 2007, it later denied Houtan's application for preliminary injunction pursuant to its Order dated
3 November 16, 2007. Houtan contends that the Court's denial of preliminary injunctive relief was not
4 a conclusive finding of the merits of Houtan's claims and did not constitute an authorization for
5 ConocoPhillips to remove its equipment and improvements from the property during the pendency of
6 this action.

7 **3. Legal Issues**

8 The key legal issue to be decided is whether ConocoPhillips' termination of Houtan's
9 franchise complied with the PMPA.

10 **4. Motions**

11 On November 5, 2007, Houtan filed an *ex parte* application for a temporary restraining order
12 and preliminary injunction. The Court granted the application for temporary restraining order on
13 November 6, 2007. The Court then denied the application for preliminary injunction on November
14 16, 2007, thus dissolving the temporary restraining order.

15 ConocoPhillips intends to move to dismiss the Complaint pursuant to Rule 12(b)(6) on the
16 ground that Houtan's Complaint fails to state a claim upon which relief can be granted. The
17 bases for the motion will be that: 1) ConocoPhillips provided adequate and timely notice of
18 termination for a legitimate reason under the PMPA; and 2) Houtan's request for a "bona fide
19 offer" from ConocoPhillips was untimely under the PMPA, as Houtan Petroleum failed to make
20 such a demand within 30 days after receipt of notice of termination. The parties have stipulated
21 that ConocoPhillips' last day to file such a motion to dismiss (or alternatively to answer the
22 Complaint) shall be extended to December 31, 2007.

23 In the event Houtan declines to purchase or rent ConocoPhillips' equipment or
24 improvements, it may be necessary for ConocoPhillips to seek an order compelling Houtan to
25 allow ConocoPhillips to access the Station property to remove the equipment and improvements,
26 which Houtan disputes ConocoPhillips has a right to do during the pendency of this action.

27 **5. Amendment of Pleadings**

28 Houtan does not anticipate the need for amendment of its complaint. In the event the

1 parties do not reach a mutually acceptable agreement regarding either the purchase or rental of
2 ConocoPhillips' equipment and improvements and Houtan prevents ConocoPhillips from
3 removing such property from the station prior to ConocoPhillips' answer to the Complaint,
4 ConocoPhillips may assert appropriate counterclaims against Houtan, including for any
5 appropriate provisional relief. To the extent the Court does not grant ConocoPhillips' motion to
6 dismiss, ConocoPhillips will of course answer the Complaint and assert all appropriate
7 affirmative defenses.

8 **6. Evidence Preservation**

9 The parties do not anticipate any issues regarding the preservation of evidence.

10 **7. Disclosures**

11 The parties agree to exchange initial disclosures pursuant to Fed. R. Civ. P. 26(f) by January
12 7, 2007.

13 **8. Discovery**

14 Houtan plans to take the depositions of ConocoPhillips' Persons Most Knowledgeable,
15 including but not limited to Richard Mathews, Jay Rollins and Dan Pellegrino.

16 ConocoPhillips plans to take the depositions of Houtan, its president, Ed Haddad, and such
17 other representatives of Houtan as may be indicated. ConocoPhillips also intends to take the
18 deposition of John Vidovich of V.O. Limited. ConocoPhillips may take such additional depositions
19 as may be indicated by the parties' initial disclosures and written discovery responses and its
20 continuing case investigation.

21 The parties also intend to conduct documentary discovery in the form of interrogatories,
22 requests for admissions and requests for production of documents.

23 The parties do not propose that any limitations or modifications of the discovery rules should
24 be made.

25 **9. Class Actions**

26 This is not a class action.

27 **10. Related Cases**

28 There are no related cases pending before another judge of this court, or before another court

1 or administrative body.

2 **11. Relief**

3 Houtan contends that the complaint seeks injunctive relief seeking reinstatement of the
4 franchise relationship and damages arising out of ConocoPhillips' termination of the franchise
5 agreement without its alleged compliance with the PMPA. Based on the current state of affairs, if
6 liability is established, damages take the form of lost profits and goodwill value of business based on
7 its cessation of supply of Union 76 branded gasoline and de-branding of the station. Such damages
8 tend to increase with each day that Houtan operates the station without the Union 76 brand.
9 Ultimately, the total amount of such damages sustained will be a matter for expert opinion.

10 ConocoPhillips contends that "reinstatement of the franchise relationship" is not possible as
11 ConocoPhillips no longer has any right to convey possession of the leased franchise premises to
12 Houtan. As such, the franchise termination was appropriate, as the Court recognized in denying
13 preliminary injunctive relief. Accordingly, ConocoPhillips contends that after the effective date of
14 termination, Houtan had no right to continued supply from ConocoPhillips or use of ConocoPhillips'
15 Union 76 marks, and thus would not be entitled to any damages for "lost profits and goodwill."

16 Houtan contends that in light of the fact that Houtan is in lawful possession of the property by
17 virtue of its lease with the landowner, reinstatement of the franchise relationship under the terms of
18 the September 2007 franchise agreement is not only possible, but is mandated by the PMPA if it is
19 found that ConocoPhillips failed to comply with all of the conditions for lawful termination under the
20 PMPA.

21 **12. Settlement and ADR**

22 Counsel on behalf of all parties have been actively engaged in settlement discussions.
23 Plaintiff believes that discovery pertaining to ConocoPhillips' alleged appraisal of the equipment and
24 improvements and a decision on ConocoPhillips' contemplated motion for summary judgment may
25 be necessary to position the parties to negotiate a resolution. The parties intend to fully comply with
26 the requirements of ADR Local Rule 3-5. The parties are agreeable to participating in a settlement
27 conference before a Magistrate Judge.

28 **13. Consent to Magistrate Judge For All Purposes**

1 The parties will not consent to have a magistrate judge conduct all further proceedings
2 including trial and entry of judgment.

3 **14. Other References**

4 The case is not suitable for reference to binding arbitration, a special master, or the Judicial
5 Panel on Multidistrict Litigation.

6 **15. Narrowing of Issues**

7 The parties will meet and confer in connection with the eventual submission of a proposed
8 pretrial conference order in an effort to narrow the issues and/or regarding the possibility of
9 presenting evidence at trial through summaries or stipulated facts.

10 **16. Expedited Schedule**

11 This is not the type of case that can be handled on an expedited basis with streamlined
12 procedures.

13 **17. Scheduling**

14 The parties propose the following schedule:

Designation of experts:	July 14, 2008
Rebuttal expert reports:	August 18, 2008
Discovery cutoff:	September 19, 2008
Hearing on dispositive motions:	November 3, 2008
Final pretrial conference:	December 2, 2008
Trial:	January 26, 2009

21 **18. Trial**

22 Houtan contends that it is entitled to a jury trial because it has suffered and continues to suffer
23 damages arising out of ConocoPhillips' termination of the franchise relationship, which Houtan will
24 be entitled to recover if it is determined that ConocoPhillips failed to comply with the PMPA with
25 regard to such termination.

26 ConocoPhillips contends that in light of the Court's finding in its decision denying Houtan's
27 application for preliminary injunction that the termination of the franchise agreement was
28 appropriate, Houtan Petroleum had no right to continue to use the Union 76 trademarks.

1 Consequently, ConocoPhillips contends that Houtan's claim for damages fails as a matter of law and
2 only equitable claims will remain for trial, and that trial to the Court would therefore be appropriate.

3 The parties estimate that a jury trial would last 5 to 7 days, but if the case is tried to the Court
4 the parties estimate a 3-5 day trial.

5 **19. Disclosure of Non-party Interested Entities or Persons**

6 Pursuant to Civil L.R. 3-16, the undersigned certify that the as of this date, other than the
7 named parties, there is no such interest to report, except with regard to Ed Haddad, an individual,
8 who does have a financial interest in the subject matter in controversy by virtue of the fact that he is a
9 director and shareholder of Plaintiff, Houtan Petroleum, Inc.

10 Dated: December 7, 2007

BLEAU / FOX,
A Professional Law Corporation

11 By: /S/ Thomas P. Bleau.
12 Thomas P. Bleau, Esq.
13 Martin R. Fox, Esq.
14 Gennady L. Lebedev, Esq.
15 Attorneys for Plaintiff, Houtan Petroleum, Inc.

16 Dated: December 7, 2007

GLYNN & FINLEY, LLP

17 By: /S/ Adam Friedenberg.
18 Clement L. Glynn, Esq.
19 Adam Friedenberg, Esq.
20 Attorneys for Defendant, ConocoPhillips
21 Company

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[PROPOSED] ORDER

For good cause shown, the Court hereby ORDERS:

The following case management dates shall apply to this action:

Designation of experts: July 14, 2008

Rebuttal expert reports: August 18, 2008

Discovery cutoff: September 19, 2008

Hearing on dispositive motions: November 3, 2008

Final pretrial conference: December 2, 2008

Trial: January 26, 2009

Dated:

The Honorable Samuel Conti
United States District Judge

1 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
2 "conformed" signature (/S/) within this efiled document.
3
4

Dated: December 7, 2007

BLEAU / FOX,
A Professional Law Corporation

By: /S/ Thomas P. Bleau

Thomas P. Bleau, Esq.
Martin R. Fox, Esq.
Gennady L. Lebedev, Esq.
Attorneys for Plaintiff, Houtan Petroleum, Inc.

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